



FEDERAL RESERVE SYSTEM

12 CFR Part 251

Regulation XX; Docket No. R-1489

RIN 7100-AE 18

Concentration Limits on Large Financial Companies

AGENCY: Board of Governors of the Federal Reserve System (Board).

ACTION: Final rule.

SUMMARY: The Board is adopting a final rule (Regulation XX) to implement section 622 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (amending the Bank Holding Company Act to add a new section 14). Section 622 establishes a financial sector concentration limit that generally prohibits a financial company from merging or consolidating with, or acquiring, another company if the resulting company's liabilities upon consummation would exceed 10 percent of the aggregate liabilities of all financial companies. In addition, the final rule establishes reporting requirements for financial companies that do not otherwise report consolidated financial information to the Board or other appropriate Federal banking agency to implement section 14 of the Bank Holding Company Act.

DATES: Effective January 1, 2015.

FOR FURTHER INFORMATION CONTACT: Laurie Schaffer, Associate General Counsel, (202) 452-2272, Christine Graham, Counsel, (202) 452-3005, or Joseph J. Carapiet, Senior Attorney, (202) 973-6957, Legal Division; Felton C. Booker, Senior Supervisory Financial Analyst, (202) 912-4651, or Sean Healey, Senior Financial Analyst, (202) 912-4611, Division of Banking Supervision and Regulation; Dean Amel, Senior Economist, (202) 452-2911; Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Background
- II. Overview of Comments
- III. Financial Sector Concentration Limit
 - A. Calculating a Financial Company’s Liabilities**
 - 1. U.S. financial companies**
 - 2. Foreign financial companies**
 - B. Measuring Aggregate Financial Sector Liabilities**
 - 1. Methodology and Data*
 - C. Applying the Concentration Limit**
 - 1. Measuring liabilities upon consummation of a covered acquisition*
 - 2. Transactions for which a notice or application is not otherwise required*
 - 3. Acquisitions by Nonfinancial Companies*
 - D. Exceptions to the Concentration Limit**
 - 1. Exceptions to the Concentration Limit*
 - a. Failing insured depository institution and FDIC-assisted transactions**
 - b. De minimis transaction**
 - c. Prior written consent of the Board**
 - E. Other provisions of law**
- IV. Administrative Law Matters
 - A. Solicitation of Comments on the Use of Plain Language
 - B. Regulatory Flexibility Act
 - C. Paperwork Reduction Act
- I. Background**

On May 8, 2014, the Board invited comment on a proposed rule to implement section 622 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”)

(amending the Bank Holding Company Act to add a new section 14).¹ Section 622 establishes a financial sector concentration limit that prevents an insured depository institution, a bank holding company, a foreign bank or company that is treated as a bank holding company for purposes of the Bank Holding Company Act, a savings and loan holding company, any other company that controls an insured depository institution; or a nonbank financial company designated by the Council for supervision by the Board (“financial company”) from merging and consolidating with, acquiring all or substantially all of the assets of, or otherwise acquiring control of another company (“covered acquisition”) if the resulting company’s consolidated liabilities would exceed 10 percent of the aggregate consolidated liabilities of all financial companies. The concentration limit supplements the nationwide deposit cap in Federal banking law by imposing an additional limit on liabilities of financial companies.²

Section 622 provides that the concentration limit is “subject to” any recommendations made by the Financial Stability Oversight Council (“Council”) that the Council determines would more effectively implement section 622, and the Board is required to issue final regulations implementing section 622 that “reflect any recommendations made by the Council.”³

¹ 79 FR 27801 (May 15, 2014).

² 12 U.S.C. 1467a(e)(2)(E), 1828(c), 1842(d)(2), 1843(i)(8). The nationwide deposit cap generally prohibits the appropriate Federal banking agency from approving an application by a bank holding company, insured depository institution, or savings and loan holding company to acquire an insured depository institution located in a different home state than the acquiring company if the acquiring company controls, or following the acquisition would control, more than 10 percent of the total amount of deposits of insured depository institutions in the United States.

³ See 12 U.S.C. 1852(e). As noted in the Senate report that accompanied the Senate Banking Committee reported bill which became the Dodd-Frank Act, “[t]he intent [of this authority] is to have the Council determine how to effectively implement the concentration limit” See S. Rep. 111-176 at 92 (Apr. 30, 2010).

On January 18, 2011, the Council made three recommendations,⁴ including that the Board's regulations should:

- measure liabilities of financial companies not subject to consolidated risk-based capital rules by using U.S. generally accepted accounting principles (GAAP) or other applicable accounting standards,
- use a two-year average in calculating aggregate financial sector liabilities, and provide that the Board publish annually by July 1 the current aggregate financial sector liabilities, and
- extend the “failing bank exception” to the acquisition of any type of insured depository institution in default or in danger of default, rather than only to the acquisition of banks in default or danger of default.

Section 622 of the Dodd-Frank Act directs the Council to complete a study of the extent to which the statutory concentration limit would affect financial stability, moral hazard in the financial system, the efficiency and competitiveness of U.S. financial firms and financial markets, and the cost and availability of credit and other financial services to households and businesses in the United States.⁵ In the Council study, the Council expressed the view that the concentration limit would have a positive impact on U.S. financial stability by reducing the systemic risks created by increased financial sector concentration arising from covered acquisitions involving the largest U.S. financial companies.⁶ It concluded that the concentration limit was likely to have little or no effect on moral hazard.⁷ With respect to the impact of the

⁴ Study and Recommendations Regarding Concentration Limits on Large Financial Companies (January 2011), available at: <http://www.treasury.gov/initiatives/fsoc/studies-reports/Documents/Study%20on%20Concentration%20Limits%20on%20Large%20Firms%2001-17-11.pdf> (Council study). See also 76 FR 6756 (Feb. 8, 2011). The Council noted that it would review and, if appropriate, revise these recommendations in light of the comments it received. As of the date of this final rule, the Council had not revised any recommendation made regarding the concentration limit and, as such, the final rule reflects the recommendations set forth in the Council's last publication in the Federal Register.

⁵ See 12 U.S.C. 1852(e)(1).

⁶ Council study, p. 4.

⁷ Id., p. 10.

concentration limit on competitiveness, the Council expected the effect to be positive generally, but expressed concern that the limit introduces the potential for disparate treatment of covered acquisitions between the largest U.S. and foreign firms, depending on which firm is the acquirer or the target.⁸ The Council found that the concentration limit is unlikely to have a significant effect on the cost and availability of credit and other financial services.⁹

Section 622 authorizes the Board to define terms, as necessary, and to issue interpretations or guidance regarding application of the concentration limit to an individual financial company or to financial companies in general.¹⁰

II. Overview of Comments

The Board received 10 comments on the proposed rule from financial trade associations, law firms, policy institutions, and individuals. While commenters generally expressed support for the proposed rule, some commenters recommended revisions to provisions of the proposed rule. For instance, one commenter suggested that the Board measure liabilities for purposes of the initial period between July 1, 2015, and June 30, 2016, using data as of December 31, 2014. One commenter requested that the Board publish more specific details of the methodology used for calculating financial sector liabilities. Commenters provided views on whether certain transactions should be prohibited once a financial company's liabilities exceeded the

⁸ Id., p. 11. The Council also noted that the differences in treatment between U.S. and foreign firms could increase the degree to which the largest firms operating in the U.S. financial sector are foreign-owned, and recommended that the Board continue to monitor and report on the effect of the concentration limit on the ability of U.S. firms to compete with foreign banking organizations. The Council stated that it would make a recommendation to Congress to address adverse competitive dynamics if the Council were to later determine that there are any significant negative effects of the concentration limit because of the disparate treatment of U.S. and foreign firms. Id., p. 12.

⁹ Id., p. 13.

¹⁰ 12 U.S.C. 1852(d).

concentration limit and the appropriate level for a de minimis exception. In addition, commenters suggested that the Board not finalize either the proposed prior notice requirement applicable to financial companies with liabilities that are close to the limit or the proposed reporting requirement applicable to financial companies that do not otherwise report consolidated liabilities to an applicable Federal banking agency.

As discussed further in the preamble, the Board modified the final rule as follows in response to these comments:

- Provided that financial sector liabilities will be calculated as of December 31, 2014, for purposes of the period beginning July 1, 2015 and ending June 30, 2016, and the two-year average will be adopted for each year thereafter;
- Removed the prior notice requirement for acquisitions by financial companies with total consolidated liabilities equal to or greater than 8 percent of aggregate financial sector liabilities;
- Provided prior consent for a covered acquisition that would result in an increase in the liabilities of the financial company that does not exceed \$100 million, when aggregated with all other covered acquisitions by the financial company during the twelve months preceding the consummation of the transaction and set forth a process and standard of review for de minimis transactions; and
- Removed the exception for merchant banking investments and added an exception for securitization transactions to the definition of “covered acquisition.”
- Provided more specific details of the methodology used for calculating financial sector liabilities.

These changes, as well as the Board’s other responses to the comments received, are discussed in greater detail below.

III. Financial Sector Concentration Limit

Under section 622 of the Dodd-Frank Act, a financial company is prohibited from consummating a covered acquisition if the ratio of the resulting financial company’s liabilities to the aggregate consolidated liabilities of all financial companies exceeds 10 percent. Consistent with section 622, the proposed rule defined a “financial company” as a company that is an insured depository institution; a bank holding company, a foreign bank or company that is

treated as a bank holding company for purposes of the Bank Holding Company Act, a savings and loan holding company, any other company that controls an insured depository institution, and a nonbank financial company designated by the Council for supervision by the Board. The proposed rule defined an insured depository institution as that term is defined in section 3(c)(2) of the Federal Deposit Insurance Act. Companies that are not affiliated with an insured depository institution, such as stand-alone broker-dealers or insurance companies, are not subject to the concentration limit unless they have been designated by the Council for supervision by the Board.

Commenters recommended that the Board modify the proposed definition of “financial company” to exclude insured depository institutions that are limited purpose savings associations and the holding companies thereof. Another commenter suggested that companies that control insured depository institutions but that are not subject to risk-based capital requirements and that do not engage in bank-like activities should not be included in the definition of a “financial company” for purposes of section 622. Section 622 of the Dodd-Frank Act defines a “financial company” to include an “insured depository institution” and “a company that controls an insured depository institution.” Because section 622 amends the Bank Holding Company Act, the terms “insured depository institution” and “control” are defined in section 2 of the Bank Holding Company Act.¹¹ To the extent a company is or controls an insured depository institution, it is

¹¹ Specifically, section 2(n) of the Bank Holding Company Act defines an “insured depository institution” with reference to section 3 of the Federal Deposit Insurance Act which includes “any savings associations the deposits of which are insured” by the FDIC. 12 U.S.C. 1841(n). Section 2(a)(2) of the Bank Holding Company Act provides that a company would “control” an insured depository institution if the company (i) directly or indirectly, or acting through one or more other persons, owned, controlled, or had power to vote 25 percent or more of any class of voting securities of the company; (ii) controlled in any manner the election of a majority of the directors or trustees of the company; or (iii) directly or indirectly exercised a controlling influence over the management or policies of the company. 12 U.S.C. 1841(a)(2).

subject to the concentration limit by statute. Accordingly, the final rule preserves the definition of “insured depository institution,” consistent with section 622.

A. Calculating a Financial Company’s Liabilities

1. U.S. financial companies

Section 622 measures “liabilities” of a financial company as total risk-weighted assets determined under the risk-based capital rules applicable to bank holding companies minus regulatory capital as calculated under the same rules.¹² Currently, bank holding companies and insured depository institutions are the only classes of financial companies subject to these risk-based capital rules. For financial companies not subject to consolidated risk-based capital rules (such as nonbank companies that control savings associations and industrial loan companies), the Council recommended that the Board measure liabilities using GAAP or other applicable accounting standards.¹³

Pursuant to the statutory direction to adopt the Council’s recommendation, the proposed rule would have required a U.S. financial company that is not subject to consolidated risk-based capital rules to calculate its liabilities in accordance with applicable accounting standards.

“Applicable accounting standards” would have been defined as GAAP, or such other accounting standard or method of estimation that the Board determines is appropriate.¹⁴

Currently, U.S. savings and loan holding companies, nonbank financial companies supervised by the Board, bank holding companies with total consolidated assets of less than

¹² 12 U.S.C. 1852(a)(3).

¹³ Council study, p. 6.

¹⁴ If a company does not calculate its total consolidated assets or liabilities under GAAP for any regulatory purpose (including compliance with applicable securities laws), the Board may, in its discretion and subject to Board review and adjustment, permit the company to provide estimated total consolidated liabilities on an annual basis using this accounting standard or method of estimation other than GAAP.

\$500 million, and U.S. depository institution holding companies that are not bank holding companies or savings and loan holding companies are not subject to consolidated risk-based capital rules, and thus will calculate their liabilities in accordance with applicable accounting standards. Savings and loan holding companies (other than those that are substantially engaged in insurance or commercial activities) will become subject to the risk-based capital rules beginning in 2015 and will be able to calculate their liabilities for purposes of section 622 using the rules applicable to bank holding companies, described below.¹⁵ The Board is in the process of applying risk-based capital rules to nonbank financial companies that are currently supervised by the Board.

Commenters were generally supportive of the proposed rule's calculation methodology. One commenter noted that certain mutual and fraternal insurance companies do not prepare consolidated GAAP financial statements for any regulatory purpose and, instead, prepare financial statements in accordance with statutory accounting principles ("SAP"), as required by state insurance law. This commenter requested that the Board clarify that SAP would automatically meet the definition of "applicable accounting standards," and that SAP-based calculations of consolidated liabilities would be deemed sufficient for purposes of section 622. Under the financial rule, a U.S. financial company that files financial statements only in accordance with SAP and does not report consolidated financial statements under GAAP would be permitted to file an estimate of its consolidated liabilities. However, this estimation is subject to the Board's review and adjustment.

¹⁵ The Board is developing capital rules for savings and loan holding companies that are insurance companies, have subsidiaries engaged in insurance underwriting, or are substantially engaged in commercial activities.

One commenter suggested that certain liabilities such as commercial paper of commercial and industrial companies, broker-dealers' customer free credit balances, managed fund assets, and funds borrowed to manufacture automobiles should be excluded from the calculation of liabilities because in the commenter's view, these liabilities do not affect U.S. financial stability. Excluding these types of liabilities from the calculation would run counter to the Council's recommendation to use liabilities as reported under GAAP or applicable accounting standards. The Council, in making this recommendation, noted that for the purpose of transparency, the liabilities calculation should use financial information that is already publicly disclosed and that using such information as reported would avoid the need to make a series of assumptions that could undermine the integrity and transparency of the calculation.¹⁶ The commenter's suggestion of excluding certain types of liabilities would require adjustments to the publicly disclosed financial figures and involve assumptions that could undermine the transparency of the calculation. Accordingly, the final rule adopts the proposed methodology without change.

Section 622 defines the term "liabilities" for nonbank financial companies supervised by the Board to mean "assets of the company as the Board shall specify by rule, in order to provide for consistent and equitable treatment of such companies."¹⁷ The final rule provides for consistent and equitable treatment of nonbank financial companies supervised by the Board by permitting each nonbank financial company to calculate its liabilities using applicable accounting standards until such companies are subject to risk-based capital requirements.

¹⁶ Council study, p. 20.

¹⁷ See section 622 of the Dodd-Frank Act; 12 U.S.C. 1852(a)(3)(C).

U.S. financial companies subject to consolidated risk-based capital rules

The proposed rule would have calculated liabilities of a U.S. financial company subject to consolidated risk-based capital rules—currently, bank holding companies and insured depository institutions—as the difference between its risk-weighted assets (as adjusted upward to reflect amounts that are deducted from regulatory capital elements pursuant to the agencies’ risk-based capital rules) and its total regulatory capital, as calculated under the applicable risk-based capital rules.¹⁸ As discussed in the preamble to the proposed rule, a bank holding company or insured depository institution will calculate risk-weighted assets for purposes of the concentration limit using the same methodology it uses to calculate risk-weighted assets under the relevant risk-based capital rules.¹⁹

Section 622 provides that risk-weighted assets of a financial company be “adjusted to reflect exposures that are deducted from regulatory capital.”²⁰ To reflect this adjustment, the proposed rule would define liabilities of a U.S. financial company subject to consolidated risk-based capital rules as: (i) the financial company’s risk-weighted assets, plus (ii) the amount of assets deducted from the financial company’s regulatory capital multiplied by an institution-

¹⁸ The final rule refers to these amounts as “deducted from regulatory capital.” See 12 CFR 3.22 (OCC); 12 CFR 217.22 (Board); and 12 CFR 324.22 (FDIC).

¹⁹ The agencies’ risk-based capital rules require an advanced approaches banking organization (generally, a banking organization with \$250 billion or more in total consolidated assets or \$10 billion or more in total on-balance sheet foreign exposure or a subsidiary of such a banking organization) that has successfully completed its parallel run to calculate each of its risk-based capital ratios using the standardized approach and the advanced approaches, and directs the banking organization to use the lower of each ratio as its governing ratio. See 12 CFR 3.10 (OCC); 12 CFR 217.10 (Board); and 12 CFR 324.10 (FDIC).

²⁰ See 12 U.S.C. 1852(a)(3)(A)(i) and (B)(i). Under the Federal banking agencies’ risk-based capital rules, bank holding companies and insured depository institutions are required to deduct fully certain assets from regulatory capital, such as goodwill, certain mortgage servicing rights, deferred tax assets, and other intangibles. See 12 CFR 3.22 (OCC); 12 CFR 217.22 (Board); and 12 CFR 324.22 (FDIC).

specific risk-weight, minus (iii) the financial company's total regulatory capital. The proposed institution-specific risk-weight applied to deducted exposures was equal to the inverse of the institution's total capital ratio minus one.²¹ This approach effectively adds back a risk-weighted amount for assets that have been deducted from capital (which are generally considered risky) without penalizing a firm for having a high amount of capital. Commenters were generally supportive of the proposed methodology, and the final rule adopts this methodology as proposed.

2. *Foreign financial companies*

Section 622 provides that the liabilities of a "foreign financial company" equal the risk-weighted assets and regulatory capital attributable to the company's "U.S. operations." A "foreign financial company" includes a foreign banking organization that is a bank holding company (i.e., owns a U.S. bank) or is treated as a bank holding company (i.e., operates a U.S. branch or agency), a foreign savings and loan holding company, a foreign company that controls a U.S. insured depository institutions but is not treated as a bank holding company (such as a company that controls an industrial loan company or limited-purpose credit card bank), and a foreign nonbank financial company designated by the Council for supervision by the Board. The final rule would define "U.S. operations" of a foreign financial company as the consolidated liabilities of all U.S. branches, agencies, and subsidiaries (including depository institutions and non-depository institutions) domiciled in the United States (including any lower-tier subsidiary of the U.S. subsidiary, whether domestic or foreign).

²¹ One is subtracted from the inverse of the total capital ratio to account for the fact that amounts deducted from regulatory capital are not added back into regulatory capital under section 622. To illustrate this method, if an institution's total capital ratio were equal to 8 percent (the regulatory minimum), the institution-specific factor would equal $\frac{1}{.08} - 1$, or 12.5 - 1, or 11.5. If an institution's total capital ratio is equal to 16 percent (twice the regulatory minimum), the institution-specific factor would equal $\frac{1}{.16} - 1$, or 6.25 - 1, or 5.25.

Because the U.S. operations of foreign financial companies may include both entities that are subject to risk-weighted asset calculation requirements and entities that are not, the final rule (as did the proposed rule) computes U.S. liabilities using the risk-weighted asset methodology for subsidiaries subject to risk-based capital rules, and applicable accounting standards for all branches, agencies, and nonbank subsidiaries. For foreign banking organizations, the final rule computes liabilities for U.S. branches, agencies, and nonbank subsidiaries using “assets” under GAAP or applicable accounting standards because these operations are not required to hold regulatory capital separate from their parent.

The final rule also requires a foreign banking organization to adjust U.S. liabilities to reflect transactions with affiliates. Specifically, the measure of liabilities must include any net amounts that the branch, agency, or U.S. subsidiary has lent to the foreign bank’s non-U.S. offices or non-U.S. affiliates (other than those non-U.S. affiliates owned by a U.S. subsidiary of the foreign banking organization) because these balances represent exposures of the U.S. branch, agency, or U.S. subsidiary to the non-U.S. affiliates. The amount of GAAP assets excludes amounts corresponding to balances and transactions between and among its U.S. branches, agencies, and U.S. subsidiaries (including any non-U.S. lower-tier subsidiaries of such U.S. subsidiaries) to the extent such items are not already eliminated in consolidation, to avoid double counting of assets of U.S. operations.²²

Under the enhanced prudential standards rule adopted by the Board in February 2014, foreign banking organizations with \$50 billion or more in global total consolidated assets and \$50 billion or more in total non-branch U.S. assets must organize their U.S. subsidiaries under a single top-tier U.S. intermediate holding company by July 1, 2016. A U.S. intermediate holding

²² 79 FR 17240 (March 27, 2014).

company will be subject to the same risk-based capital requirements applicable to U.S. bank holding companies, and will calculate its liabilities for purposes of the final rule using the risk-weighted assets approach.

The U.S. assets of a foreign financial company that is not a foreign banking organization are calculated in a similar manner to the method described for foreign banking organizations, but the liabilities of a U.S. subsidiary not subject to risk-based capital rules are calculated based on the U.S. subsidiary's liabilities under applicable accounting standards, rather than its assets. In addition, the foreign financial company is permitted, but not required, to adjust the measure of liabilities for transactions with affiliates.

As noted above, section 622 requires the Board to establish the methodology for calculating the liabilities of a financial company that is an insurance company or other nonbank financial company supervised by the Board in order to provide for consistent and equitable treatment of such companies. For the reasons stated above, the final rule provides for consistent and equitable treatment of nonbank financial companies supervised by the Board by permitting each nonbank financial company to calculate its liabilities using applicable accounting standards.

B. Measuring Aggregate Financial Sector Liabilities

1. Methodology and Data

Section 622 measures the total liabilities of each covered financial company against the aggregate liabilities of all financial companies in applying the 10 percent concentration limit. The aggregate consolidated liabilities of all financial companies are equal to the sum of individual financial company liabilities as calculated for each financial company using the applicable methodology, as described above.

Consistent with the Council's recommendation, the proposed rule would have measured aggregate financial sector liabilities for a given year as the average of the financial sector

liabilities as of December 31 of each of the preceding two calendar years. In order to calculate the two year period for the initial period between July 1, 2015, and June 30, 2016, the proposed rule would have required certain companies (e.g., foreign banking organizations) who are not currently subject to the reporting requirements of a Federal banking agency to calculate and report their liabilities as of December 31, 2013. One commenter suggested that the Board measure liabilities for purposes of the initial period between July 1, 2015, and June 30, 2016, using only data for one year (which would be liabilities as of December 31, 2014) and not require all financial companies to report their liabilities as of December 31, 2013. Foreign banking organizations were not otherwise required to report their U.S. assets as of December 31, 2013, and may not have data available to report their U.S. liabilities as of this date.

To relieve burden on financial companies that do not currently report to a Federal banking agency, the final rule incorporates the commenters' recommendation to use a one-year initial period. As such, pursuant to the final rule, the Board will calculate the denominator using the aggregate financial sector liabilities as of December 31, 2014 for the initial period between July 1, 2015, and June 30, 2016. For all subsequent periods, the Board will use the two-year average recommended by the Council. As discussed in further detail below, the final rule includes a new reporting requirement for financial companies that have not reported consolidated financial information to the Board or other appropriate Federal banking agency.

One commenter suggested that the Board reserve authority to adjust the calculation methodology in the event that future regulatory changes have destabilizing or distortive effects. The Board will consider adjusting the calculation methodology, if necessary because of future regulatory changes, within the limits of the law.

The preamble to the proposed rule noted that, to the maximum extent possible, the Board will calculate aggregate financial sector liabilities using information already reported by financial companies. For instance, bank holding companies report their risk-weighted assets, regulatory deductions, and total capital on the Consolidated Financial Statements for Holding Companies (FR Y-9C), and the Board will use this information to calculate liabilities of these firms. For bank holding companies with total consolidated assets of less than \$500 million, the Board will measure consolidated liabilities by taking the difference between total consolidated assets minus the equity capital of such company on a consolidated basis, which amounts are reported on the Parent Company Only Financial Statements for Small Holding Companies (FR Y-9SP). For foreign banking organizations, the Board will use information reported on the Capital and Asset Report for Foreign Banking Organizations (FR Y-7Q) to the extent possible. In 2013, the Board amended the FR Y-7Q to require foreign banking organizations to report a new item entitled “Total combined assets of U.S. operations, net of intercompany balances and transactions between U.S. domiciled affiliates, branches, and agencies.” Foreign banking organizations began reporting this item as of March 31, 2014.²³

In order to collect data necessary to implement the concentration limit, the proposed rule would have established a new reporting requirement for financial companies that have not historically reported consolidated financial information to the Board or other appropriate Federal banking agency.²⁴ The new reporting requirement, the Financial Company Report of

²³ Some respondents will not report the new item on the FR Y-7Q until December 2014.

²⁴ These institutions include savings and loan holding companies where the top-tier holding company is an insurance company that only prepares financial statements in accordance with SAP, holding companies of industrial loan companies, limited-purpose credit card banks, and limited-purpose trust banks, and currently, nonbank financial companies supervised by the Board.

Consolidated Liabilities, would have required financial companies domiciled in the United States to report their total consolidated liabilities under applicable accounting standards and would require financial companies domiciled in a country other than the United States to report the sum of the total consolidated liabilities of each top-tier U.S. subsidiary of the financial company, as determined under applicable accounting standards.²⁵ The report is referred to as the FR XX-1 report because it is being adopted pursuant to Regulation XX.²⁶

One commenter argued that requiring financial companies that are not state member banks, bank holding companies, or subsidiaries of bank holding companies to submit FR XX-1 exceeds the Board's authority. This commenter also argued that requiring financial companies to submit the FR XX-1 imposes a disproportionate burden on financial companies that do not report liabilities to the Board, the estimated burden of 1 hour per respondent was too low, and that the reporting form should have been published in the Federal Register.

Section 622 provides that "the Board shall issue regulations implementing this section in accordance with the recommendations of the Council."²⁷ The proposed information collection is necessary for the Board to calculate aggregate liabilities and is consistent with the Board's statutory authority. With regard to the commenter's assertion that the reporting form is unduly burdensome, the proposed reporting form collects a single line item and collects the minimum information necessary to calculate an institution's liabilities. However, after taking into account the comment, the Board has adjusted the burden to be 5 hours per respondent for the first year,

²⁵ A parent holding company would have been permitted, but not required, to reduce total liabilities by amounts corresponding to balances and transactions between U.S. subsidiaries of the parent holding company to the extent such items would not already be eliminated in consolidation.

²⁶ The proposal referred to this report as the FR Y-17 report.

²⁷ See 12 U.S.C. 1852(a)(3)(C).

and 2 hours per respondent thereafter. The higher initial burden is intended to reflect time needed to educate staff, develop an approval process for the submitted report, and, for firms that seek to rely on accounting standards other than GAAP, develop a method of estimation. After this process is established, the aggregate burden to complete this form is expected to be 2 hours per respondent per year. Finally, the preamble to the proposed rule described the FR XX-1 in detail, and the form was available on the Board's website for comment. The Board is adopting the FR XX-1 as proposed. The Board will begin collecting the FR XX-1 as of December 31, 2014, and the submission date is 90 calendar days after the December 31 as-of-date.

As discussed in the preamble to the proposed rule, information contained in a FR XX-1 filing generally will be made available to the public upon request. The Board proposed allowing a reporting holding company to request confidential treatment for the report if the holding company believed that disclosure of specific commercial or financial information in the report would likely result in substantial harm to its competitive position or that disclosure of the submitted information would result in unwarranted invasion of personal privacy. One commenter requested either that all reported information be treated as confidential information or that financial companies be permitted to make a one-time election for confidential treatment.

The Freedom of Information Act, 5 U.S.C. § 552, (FOIA) requires the Board to release information to the public unless a specific exemption applies.²⁸ Reporting companies may request confidentiality but such requests must contain detailed justifications corresponding to the claimed FOIA exemption. In such cases, the burden is on the reporting company to demonstrate that the information falls within one of the exemptions under the FOIA. Requests for confidentiality must be evaluated on a case-by-case basis. If a reporting company requests

²⁸ 5 U.S.C. § 552.

confidential treatment, the Board will review the request to determine if the company has met the burden of demonstrating a particular FOIA exemption applies.

One commenter requested that the Board provide additional detail on the methodology it uses to calculate aggregate financial sector liabilities for U.S. bank holding companies and foreign banking organizations. For U.S. bank holding companies, insured depository institutions, and savings and loan holding companies, the Board intends to rely on total risk-weighted assets, as reported on schedule HC-R, Regulatory Capital, of the FR Y-9C, and adjust that amount for amounts deducted from regulatory capital, as reported on schedule HC-R, multiplied by the institution-specific risk weight. In calculating the amounts deducted from regulatory capital, the Board will sum the total adjustments and deductions for the categories of regulatory capital (e.g., common equity tier 1 capital and additional tier 1 capital). For foreign banking organizations, the Board generally intends to use the item on the FR Y-7Q entitled “Total combined assets of U.S. operations, net of intercompany balances and transactions between U.S. domiciled affiliates, branches, and agencies” and, to the extent that a foreign banking organization has a U.S. bank holding company subsidiary, subtract assets attributable to the U.S. bank holding company and replace that amount with liabilities attributable to the U.S. bank holding company (calculated in accordance with the risk-weighted asset methodology, using data from the FR Y-9C). To the extent that the Board uses different regulatory reporting sources to calculate liabilities, it generally expects to describe the sources in connection with publication of the financial sector liabilities figure.

One commenter asked that the Board set forth a specific schedule for a review and ex post evaluation of the final rule. The Board generally reviews its rules every five years in order to update requirements, reduce unnecessary burden, and streamline regulatory requirements

based on the Board's experience in implementing a rule. As such, the Board does not believe that a separate schedule for a review and ex post evaluation of the final rule is necessary.

C. Applying the Concentration Limit

Section 622 prohibits a financial company from consummating a covered acquisition if the liabilities of the resulting financial company upon consummation of the covered acquisition would exceed 10 percent of aggregate financial sector liabilities.

1. Measuring liabilities upon consummation of a covered acquisition

The proposed rule set forth a method for calculating liabilities upon consummation of an acquisition subject to the concentration limit ("covered acquisition"). As set forth in the proposed rule, where a covered acquisition would involve a foreign acquirer and a foreign target, the final rule would provide that liabilities immediately upon consummation of the covered acquisition would equal the total consolidated liabilities of the U.S. operations of the resulting foreign financial company, but would not include liabilities of the foreign operations of either the acquiring foreign bank or the target foreign firm, except to the extent these foreign assets are controlled by a U.S. subsidiary or branch of either foreign entity. Also in the case of a cross-border covered acquisition involving a U.S. company, the proposal rule would have included the liabilities of both the U.S. and foreign subsidiaries of the U.S. company, regardless of whether the U.S. company is the acquirer or target. The final rule adopts the proposed methodology without change.

2. Transactions for which a notice or application is not otherwise required

Under the proposed rule, prior to consummating a covered acquisition, a financial company that was not otherwise required to file a prior notice or application with the Board would have been required to provide written notice to the Board if the company's liabilities immediately after consummation of the transaction would be above 8 percent of the aggregate

financial sector liabilities and the covered acquisition would increase the liabilities of the resulting financial company by more than \$2 billion, when aggregated with all other covered acquisitions during the twelve months preceding the consummation of the transaction. This provision was proposed to provide notification to the Board regarding covered financial firms that were nearing the concentration limit.

Commenters suggested that the Board not adopt this requirement because financial companies are well-placed to monitor their own compliance with the limit and will have incentives to consult with the Board should a transaction put the company at risk of exceeding the limit, given that the statute prohibits transactions that exceed the limit. One commenter argued that the imposition of a prior notice requirement would add burden and create administrative difficulties for financial companies without a corresponding benefit.

In light of commenters' views, the final rule does not include a prior notice requirement. If a company consummates a covered acquisition in violation of the limit, the company may be required to divest any company or assets acquired in violation of the limit. In order to ensure compliance with the concentration limit, a financial company should have policies and procedures in place to monitor its compliance with section 622. In addition, the Board will consider compliance with the concentration limit in reviewing proposed acquisitions or mergers under other laws such as the Bank Holding Company Act. If the Board receives a notice or application related to a covered acquisition, the Board will consider whether the transaction is permissible under section 622.

3. *Acquisitions by Nonfinancial Companies*

Under the proposed rule, a covered acquisition between a financial company and a company that is not a financial company under section 622, including those in which the nonfinancial company is the acquirer, and becomes a financial company as a result of the

transaction, would be covered by the limit. The final rule adopts this approach substantively as proposed.

D. Exceptions to the Concentration Limit

The statute exempts three types of acquisitions from the concentration limit: (i) an acquisition of a bank in default or in danger of default; (ii) an acquisition with respect to which the FDIC provides assistance under section 13(c) of the Federal Deposit Insurance Act; and (iii) an acquisition that would result only in a de minimis increase in the liabilities of the financial company.²⁹ Under the statute, each of these types of transactions requires prior written consent of the Board.³⁰

1. Exceptions to the Concentration Limit

a. Failing insured depository institution and FDIC-assisted transactions

The proposed rule provided that, with prior written consent of the Board, the concentration limit would not apply to the acquisition of an insured depository institution in default or in danger of default, as determined by the appropriate Federal banking agency of the insured depository institution, in consultation with the Board. The proposed rule was consistent with the Council's recommendations to expand the "failing bank exception" to apply to the acquisition of any type of insured depository institution in default or in danger of default.³¹ This

²⁹ See 12 U.S.C. 1852(c).

³⁰ Id.

³¹ The Council noted that section 622 does not restrict an acquisition of a "bank" (as that term is defined in the Bank Holding Company Act) in default or in danger of default, subject to the prior written consent of the Board; however, this exception applies by its terms to a failing "bank," rather than all types of failing insured depository institutions, including savings associations, industrial loan companies, and limited-purpose credit card banks. According to the Council, "the important policy that supports the exception for the acquisition of failing banks—namely, the strong public interest in limiting the costs to the Deposit Insurance Fund that could arise if a bank were to fail, which might be partly or wholly limited through acquisition of a failing bank

would include savings associations and industrial loan companies, for example. Similarly, the proposed rule would have provided that, with prior written consent of the Board, the concentration limit would not apply to a covered acquisition with respect to which assistance is provided by the Federal Deposit Insurance Corporation under section 13(c) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)). The final rule adopts these proposed exceptions without change.

b. De minimis transaction

The proposed rule would have defined a de minimis increase for purposes of the concentration limit as an increase in the total consolidated liabilities of a financial company that does not exceed \$2 billion, when aggregated with all other acquisitions by the company under the de minimis authority during the twelve months preceding the date of the transaction. One commenter recommended that the Board raise the amount from \$2 billion to \$5 billion and another urged the Board to undertake further empirical analysis to determine the appropriate limit.

The final rule maintains the \$2 billion threshold. As the Council noted, section 622 is intended, along with a number of other provisions in the Dodd-Frank Act, to promote financial stability.³² Section 604 of the Dodd-Frank Act is another provision that, like section 622, is designed to promote financial stability. It amended sections 3 and 4 of the Bank Holding Company Act to require the Board to evaluate the risks to the stability of the U.S. banking or financial system in reviewing proposed acquisitions of banks and nonbanks by bank holding

by another firm—applies equally to insured depository institutions generally, and is not limited to “banks” as that term is defined in the [Bank Holding Company Act].”

³² Council study, p. 3.

companies.³³ In approving the acquisition by Capital One Financial Corporation of ING Bank, fsb, the Board offered three examples of transactions it may presume, absent other evidence, not to present financial stability concerns: (1) an acquisition of less than \$2 billion of assets, (2) a transaction resulting in a firm with less than \$25 billion in total assets, or (3) a corporate reorganization. Similarly, in the Board's view, a \$2 billion threshold is appropriate as a *de minimis* threshold in this rule because it would only permit those covered acquisitions that would not likely, on their own, increase risk to financial stability posed by concentration in the financial sector.³⁴

c. Prior written consent of the Board

Under the proposed rule, a financial company that sought to consummate a covered acquisition that qualifies for an exception described above must obtain the prior written consent of the Board, in addition to any other regulatory notices or approvals otherwise required for the covered acquisition. One commenter recommended that the final rule set forth an explicit standard under which the Board would review a proposed transaction—specifically, whether the consummation of the proposed acquisition would create a level of concentration in the financial sector that would pose a threat to financial stability. In addition, the commenter requested that the Board specify the process under which it will review a *de minimis* acquisition.

In response to comments, the final rule provides additional detail on the process and standard under which the Board will review a *de minimis* acquisition. Under the final rule, a financial company that seeks to make *de minimis* covered acquisition must file a request with the Board prior to consummation of the proposed transaction that describes the covered acquisition,

³³ 604(d) and (e) of the Dodd-Frank Act; 12 U.S.C. 1842(c)(7) and 1843(j)(2)(A).

³⁴ See, Capital One Financial Corporation, FRB Order No. 2012-2 (Feb. 14, 2012).

the projected increase in the company's liabilities resulting from the acquisition, the aggregate increase in the company's liabilities from acquisitions during the twelve months preceding the projected date of the acquisition, and any additional information requested by the Board. The Board will act on such a request within 90 calendar days after receipt of the complete request, unless that time period is extended by the Board. To the extent that a proposed transaction requires approval by, or prior notice to, the Board under another statutory provision (for example, under the Bank Holding Company Act) the Board intends to act on the request for prior written consent under section 622 concurrently with its action on the request for approval or notice under the other statute.

In reviewing a proposed de minimis transaction, the Board will consider whether the consummation of the covered acquisition could pose a threat to financial stability. As noted by the Council in its study on the concentration limit, this concentration limit is intended, along with a number of other provisions in the Dodd-Frank Act, to promote financial stability and address the perception that large financial institutions are "too big to fail."³⁵ The final rule's standard for reviewing exceptions to the concentration limit is intended to further this statutory intent. Proposed de minimis transactions may also require a separate consideration under another statute and may be subject to a denial or objection pursuant to the standards under that statute.

Commenters requested that the Board provide its general consent for transactions for which the consideration paid is \$100 million or less, and for which the associated increase in liabilities is within the \$2 billion de minimis cap, with only an after-the-fact notice. Transactions that, in aggregate, result in an increase in the total consolidated liabilities of a financial company of \$100 million or less are unlikely to affect materially the concentration of the financial sector.

³⁵ Council study, p. 3.

As part of the final rule, the Board is providing general consent for transactions that result in an increase in the total consolidated liabilities of a financial company of less than \$100 million, when aggregated with all other acquisitions by the company under this general consent authority during the twelve months preceding the date of the transaction. A company must provide a notice to the Board no later than 10 days after consummating the covered acquisition that describes the covered acquisition, the increase in the company's liabilities resulting from the acquisition, and the aggregate increase in the company's liabilities from acquisitions during the twelve months preceding the date of the acquisition.

2. *Organic growth*

Section 622 and the implementing final rule limit growth by the largest, most interconnected financial companies through acquisitions or mergers. The proposed rule would have identified certain activities that would not be treated as a covered acquisition, including acquiring shares in the ordinary course of collecting a debt previously contracted (DPC), in a fiduciary capacity, in connection with underwriting or market making, or merchant or investment banking or insurance company investment activity. The proposed rule would have also clarified that internal corporate reorganizations were not "covered acquisitions" for purposes of section 622.

One commenter requested that the Board reconsider the proposed exceptions for merchant banking investments and the acquisition of DPC assets. The commenter noted that Congress enumerated specific exceptions from the statutory concentration limit, and chose not to provide an exception for merchant banking investments or acquisition of DPC assets. In this commenter's view, Congress intended to enact a comprehensive limitation on growth through acquisition, and the proposed exceptions for merchant banking investments and acquisition of DPC assets would create a loophole that could undermine the intent of the statute. The

commenter expressed the view that merchant banking investments and ownership of DPC assets could lead to effective ownership and control of another company.

In the alternative, the commenter recommended that the Board replace the exceptions for the acquisition of DPC assets and merchant banking investments with an actual specified time period or definition of control, which would exempt a brief ownership stake from triggering section 622's limitations on acquisitions.³⁶

In light of this comment, the Board has considered the language and legislative intent of section 622, as well as the Council's study on the effects of the concentration limit. Based on these considerations, the Board is retaining the exception for acquisition of DPC assets, but eliminating the exception for merchant banking investments. The Council's study described the concentration limit as intended to promote financial stability and address the perception that large financial institutions are "too big to fail."³⁷ In its study, the Council expressed the view that the concentration limit will reduce the risks to U.S. financial stability created by increased concentration arising from mergers, consolidations or acquisitions involving the largest U.S. financial companies.³⁸ It also expressed the view that the concentration limit does not prevent firms from growing larger through internal, organic growth.³⁹

In the Board's view, the acquisition of an interest in a company during the regular course of securing or collecting a debt previously contracted is integral to the business of lending, and

³⁶ Specifically, the commenter requested that "control" be defined as either majority ownership or substantial influence over the business decisions of the company. In the alternative, the commenter suggests that the Board exempt merchant banking investments and acquisition of DPC assets only if held for less than one year.

³⁷ Council study, p. 10.

³⁸ Council study, p. 10.

³⁹ Council study, p. 5.

should not be constrained by the concentration limit. An acquisition of shares of a company through a DPC acquisition results from a borrower defaulting on a loan, rather than an intentional investment by a financial company. These acquisitions protect the lender from loss, and typically require a divestiture of the interests within five years.

In contrast to a DPC acquisition, engaging in a merchant banking investment that results in control of a company is an intentional investment decision by a financial company. A merchant banking investment is solely for the purpose of acquiring an interest in a nonfinancial company. As such, the Board has determined that merchant banking investments that result in control of a company should not be exempt. Merchant banking investments are fundamentally different from the situation where a company must foreclose on shares of a company held as collateral in order to recover the funds it has lent. Therefore, to the extent that a merchant banking investment gives rise to control under the Bank Holding Company Act, it will be treated as a “covered acquisition” for purposes of section 622. A financial company whose liabilities exceeded the concentration limit could still make merchant banking investments, provided that it did not acquire control of the portfolio company.

Other commenters suggested several additional types of transactions that should be exempt from the definition of covered acquisition because they are ordinary business transactions. Among these suggestions were the acquisition of a loan portfolio structured as an acquisition of a special purpose vehicle instead of the purchase of underlying loans, community development investments, investments in small business investment companies, leases structured as an investment in a company, the acquisition of securities in connection with customer-driven hedging positions, securities repurchase financing transactions, securities borrowing and lending

transactions, and investments by funds of which a financial company subsidiary serves as a general partner.

In response to commenters' observation that the acquisition of certain assets, such as a loan portfolio, may be structured as a legal matter as an acquisition of a special purpose vehicle, the final rule would include a new exception for securitization transactions. Specifically, a "covered acquisition" would exclude an acquisition of ownership or control of a company that is, or will be, an issuer of asset-backed securities (as defined in section 3(a) of the Securities and Exchange Act of 1934) so long as the financial company that retains an ownership interest in the company complies with the credit risk retention requirements in the regulations issued pursuant to section 15G of the Securities and Exchange Act of 1934. The credit risk retention requirements are found in section 941 of the Dodd-Frank Act, and the exception would permit a financial company to continue sponsoring securitizations after the financial company's liabilities exceed the concentration limit, consistent with the requirements of the Dodd-Frank Act.⁴⁰

With respect to the commenter's suggestion that the Board exempt small business and community development investments, leases structured as investments, acquisition of securities in connection with customer-driven hedging positions, investments by funds of which a financial company subsidiary serves as a general partner, securities repurchase financing transactions, and securities borrowing and lending transactions, these investments would not be prohibited under the final rule so long as they do not give rise to control over the investee company.

Commenters requested clarification of the proposed exception for fiduciary acquisitions, requesting that there be a complete, unconditional exclusion of assets acquired by a financial company acting in a fiduciary capacity. The final rule clarifies that the fiduciary exception in

⁴⁰ Section 941 of the Dodd-Frank Act, 15 U.S.C. 78o-11.

section 622 would permit a financial company to continue to engage in bona fide fiduciary activities in accordance with applicable fiduciary law. As discussed below, the final rule contains an anti-evasion provision applicable to all transactions that prohibits a financial company from organizing or operating its business or structuring any acquisition of, or merger or consolidation with, another company in such a manner that would result in evasion of application of the concentration limit.

E. Other provisions of law

Other provisions of the Dodd-Frank Act require the Board, in evaluating applications or notices under section 3 or 4 of the Bank Holding Company Act or under section 163 of the Dodd-Frank Act, to consider the risks to financial stability posed by a merger or acquisition by a financial company.⁴¹ These provisions may result in more stringent limitations than the concentration limit for a particular transaction or proposal, depending on the Board's analysis of the effects of the proposal on financial stability. Furthermore, other restrictions on acquisitions, such as the competitive restrictions contained in the Bank Holding Company Act or Federal antitrust laws, may also limit certain transactions by financial companies.⁴²

III. Administrative Law Matters

A. Solicitation of Comments on the Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act (Pub. L. No. 106-102, 113 Stat. 1338, 1471, 12 U.S.C. 4809) requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The Board received no comments on these matters and believes that the final rule is written plainly and clearly.

⁴¹ See sections 163, 173, and 604(d), (e) and (f) of the Dodd-Frank Act; 12 U.S.C. 1842(c), 1843(j)(2)(A), 1828(c)(5), 5363, and 5373.

⁴² See, e.g., 12 U.S.C. 1842(d) and 1843(j); 12 CFR 225.14(c)(5) and (6).

B. Paperwork Reduction Act Analysis

In accordance with section 3512 of the Paperwork Reduction Act of 1995 (44 U.S.C. § 3501-3521) (PRA), the Board may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Board will obtain an OMB control number for this information collection. The Board reviewed the final rule under the authority delegated to the Board by OMB.

The final rule contains requirements subject to the PRA. The reporting requirements are found in sections 251.4(b), 251.4(c), and 251.6. To implement the reporting requirements set forth in 251.6, the Board proposes to create a new reporting form, the Financial Company Report of Consolidated Liabilities (FR XX-1). This information collection requirement would implement section 622 of the Dodd-Frank Act.

Of the comments received on the proposed rule, four specifically referenced the PRA. In response to these comments, the Board modified the final rule as follows (1) provided that financial sector liabilities will be calculated as of December 31, 2014, for purposes of the period beginning July 1, 2015 and ending June 30, 2016, and the two-year average will be adopted for each year thereafter; (2) removed the prior notice requirement for acquisitions by financial companies with total consolidated liabilities equal to or greater than 8 percent of aggregate financial sector liabilities; (3) provided prior consent for a covered acquisition that would result in an increase in the liabilities of the financial company that does not exceed \$100 million, when aggregated with all other covered acquisitions by the financial company during the twelve months preceding the consummation of the transaction and set forth a process and standard of review for de minimis transactions. These changes, as well as the Board's other responses to the comments received, are discussed in greater detail above.

Proposed Information Collection

Title of Information Collection: Reporting Requirements Associated with Regulation XX (Concentration Limit) (Reg XX); Financial Company Report of Consolidated Liabilities (FR XX-1).

Frequency of Response:

Reg XX: Annual, event generated;

FR XX-1: Annual.

Affected Public: Businesses or other for-profit.

Respondents:

Reg XX: Insured depository institutions, bank holding companies, foreign banking organizations, savings and loan holding company, companies that control insured depository institutions, and nonbank financial companies supervised by the Board;

FR XX-1: U.S. and foreign financial companies that do not otherwise report consolidated financial information to the Board or other appropriate Federal banking agency.

Abstract: Section 622 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which adds a new section 14 to the Bank Holding Company Act of 1956, as amended, establishes a financial sector concentration limit that generally prohibits a financial company from merging or consolidating with, or acquiring, another company if the resulting company's liabilities upon consummation would exceed 10 percent of the aggregate liabilities of all financial companies as calculated under that section. In addition, the rule requires certain financial companies to report information necessary to calculate the financial sector concentration limit.

Section 251.4(b) requires a financial company with liabilities in excess of the concentration limit cap to request that the Board provide prior written consent before consummates a transaction that is exempt from the concentration limit. The request for prior written consent must contain a description of the covered acquisition, the projected increase in the company's liabilities resulting from the acquisition, the projected aggregate increase in the company's liabilities from acquisitions during the twelve months preceding the projected date of the acquisition (if the request is made pursuant to paragraph (a)(3) of this section); and any additional information requested by the Board.

Section 251.4(c) requires a financial company with liabilities in excess of the concentration limit cap may provide after-the-fact notice to the Board if a covered acquisition would result in an increase in the liabilities of the financial company of less than \$100 million, when aggregated with all other covered acquisitions by the financial company made pursuant to section 251.4(c) during the twelve months preceding the date of the acquisition. A financial company that relies on this provision must provide a notice to the Board within 10 days after consummating the covered acquisition that describes the covered acquisition, the increase in the company's liabilities resulting from the acquisition, and the aggregate increase in the company's liabilities from covered acquisitions during the twelve months preceding the date of the acquisition.

Section 251.6 requires financial companies that do not report consolidated financial information to the Board or other appropriate Federal banking agency to report information on their total liabilities. At present, many financial companies do not report consolidated financial information to the Board or other appropriate Federal banking agency. These institutions include savings and loan holding companies where the top-tier holding company is an insurance

company that only prepares financial statements in accordance with SAP, holding companies of industrial loan companies, limited-purpose credit card banks, and limited-purpose trust banks. Because this information is necessary to implement section 622, this rule creates a new report, the Financial Company Report of Consolidated Liabilities (FR XX-1) on which a financial company that does not otherwise report consolidated financial information to the Board or other appropriate Federal banking agency would be required to report information on their total liabilities.

Because the Board is required to report a final calculation based on data collected as of the end of each calendar year, this proposed new report would be completed annually beginning with the report as of December 31, 2014. The Board will collect the first report by March 31, 2015.

Specifically, with respect to a financial company domiciled in the United States, the institution is required to report total consolidated liabilities of the financial company under applicable accounting standards.⁴³ With respect to a financial company domiciled in a country other than the United States, the financial company is required to report the total consolidated liabilities of the combined U.S. operations of the financial company as of December 31. “Total consolidated liabilities of the combined U.S. operations of the financial company” would mean the sum of the total consolidated liabilities of each top-tier U.S. subsidiary of financial company,

⁴³ “Applicable accounting standards” are defined for purposes of the proposed rule as GAAP, or such other accounting standards applicable to the company that the Board determines are appropriate. If a company does not calculate its total consolidated assets or liabilities under GAAP for any regulatory purpose (including compliance with applicable securities laws), the company may submit a request to the Board that it use an accounting standard or method of estimation other than GAAP to calculate its liabilities for purposes of this subpart. The Board may, in its discretion and subject to Board review and adjustment, permit the company to provide estimated total consolidated liabilities on an annual basis using this accounting standard or method of estimation.

as determined under GAAP. A parent holding company is permitted, but is not required, to reduce “total consolidated liabilities of the combined U.S. operations of the parent holding company” by amounts corresponding to balances and transactions between U.S. subsidiaries of the parent holding company to the extent such items would not already be eliminated in consolidation.

Information contained in this report generally will be made available to the public upon request. However, a reporting holding company may request confidential treatment for the report if the holding company is of the opinion that disclosure of specific commercial or financial information in the report would likely result in substantial harm to its competitive position, or that disclosure of the submitted information would result in unwarranted invasion of personal privacy.

Estimated Burden Per Response:

Reg XX: Section 251.4(b), 10 hours; Section 251.4(c), 10 hours;

FR XX-1: 2 hours; one-time implementation: 5 hours.

Number of Respondents:

Reg XX: Section 251.4(b), 1; Section 251.4(c), 1;

FR XX-1: 40.

Total Estimated Annual Burden:

Reg XX: 20 hours;

FR XX-1: 80 hours; one-time implementation: 200.

C. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act, 5 U.S.C. 601 et seq. (RFA), generally requires that an agency prepare and make available for public comment an initial regulatory flexibility analysis

in connection with a notice of proposed rulemaking.⁴⁴ The regulatory flexibility analysis otherwise required under section 604 of the RFA is not required if an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and publishes its certification and a short, explanatory statement in the Federal Register along with its rule.

The agencies solicited public comment on the rule in a notice of proposed rulemaking. The agencies did not receive any comments regarding burden to small banking organizations.

The Board adding Regulation XX (12 CFR 251 et seq.) to implement section 14 of the Bank Holding Company Act (added by section 622 of the Dodd-Frank Act), reflecting the recommendations of the Council.⁴⁵ Section 622 establishes a financial sector concentration limit that generally prohibits a financial company from merging or consolidating with, or acquiring, another company if the resulting company's liabilities upon consummation would exceed 10 percent of the aggregate liabilities of all financial companies as calculated under that section.

Under regulations issued by the Small Business Administration (SBA), a "small entity" includes those firms within the "Finance and Insurance" sector with asset sizes that vary from \$35.5 million or less in assets to \$550 million or less in assets.⁴⁶ The Finance and Insurance sector constitutes a reasonable universe of firms for these purposes because such firms generally engage in activities that are financial in nature. Consequently, bank holding companies or nonbank financial companies with asset sizes of \$550 million or less are small entities for purposes of the RFA.

⁴⁴ See 5 U.S.C. 603(a).

⁴⁵ See 12 U.S.C. 5365 and 5366.

⁴⁶ 13 CFR 121.201.

As discussed in the Supplementary Information, the final rule prohibits a financial company from merging or consolidating with, or acquiring, another company if the resulting company's liabilities upon consummation would exceed 10 percent of the aggregate liabilities of all financial companies as calculated under that section, unless the transaction would qualify for an exception to the prohibition. For instance, transactions that involve only a de minimis increase in the liabilities of a financial company would not be subject to the concentration limit. A de minimis increase would be defined as an increase of \$2 billion, when aggregated with all other acquisitions by the company under the de minimis authority during the twelve months preceding the date of the acquisition.

A company with \$550 million or less in assets will not, in practice, be affected by the final rule, which limits covered acquisitions only by firms whose liabilities will exceed ten percent of the aggregate financial sector liabilities. As noted in the preamble to the proposed rule, as of December 31, 2013, under the estimated proposed method, financial sector liabilities is approximately \$18 trillion. Furthermore, the reporting requirement for financial companies that do not otherwise report consolidated financial information to the Board or other appropriate Federal banking agency is anticipated to result in an aggregate annual burden of only 25 hours.

As noted above, because the rule is not likely to apply to any company with assets of \$550 million or less, it is not expected to apply to any small entity for purposes of the RFA. The Board does not believe that the rule duplicates, overlaps, or conflicts with any other Federal rules. In light of the foregoing, the Board does not believe that the rule would have a significant economic impact on a substantial number of small entities supervised.

List of Subjects in 12 CFR Part 251

Administrative practice and procedure, Banks, Banking, Concentration Limit, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

Authority and Issuance

For the reasons stated in the Supplementary Information, the Board of Governors of the Federal Reserve System is adding part 251 to read as follows:

PART 251—CONCENTRATION LIMIT (REGULATION XX)

Sec.

251.1 Authority, purpose, and other authorities.

251.2 Definitions.

251.3 Concentration limit.

251.4 Exceptions to the concentration limit.

251.5 No evasion.

251.6 Reporting requirements.

Authority: 12 U.S.C. 1818, 1844(b), 1852, 3101 et seq.

:

§ 251.1 Authority, purpose, and other authorities.

(a) *Authority.* This part is issued by the Board of Governors of the Federal Reserve System under sections 5 and 14 of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1844 and 1852); section 8 of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1818); the International Banking Act of 1978, as amended (12 U.S.C. 3101 et seq.); and the recommendations of the Financial Stability Oversight Council (76 Federal Register 6756) (February 8, 2011).

(b) *Purpose.* This subpart implements section 14 of the Bank Holding Company Act, which generally prohibits a financial company from merging or consolidating with, acquiring all or substantially all of the assets of, or otherwise acquiring control of, another company if the

resulting company's consolidated liabilities would exceed 10 percent of the aggregate consolidated liabilities of all financial companies.

(c) *Other authorities.* Nothing in this part limits the authority of the Board under any other provision of law or regulation to prohibit or limit a financial company from merging or consolidating with, acquiring all or substantially all of the assets of, or otherwise acquiring control of, another company.

§ 251.2 Definitions.

Unless otherwise specified, for the purposes of this part:

(a) *Applicable accounting standards* means, with respect to a company, U.S. generally accepted accounting principles (GAAP), or such other accounting standard or method of estimation that the Board determines is appropriate pursuant to § 251.3(e).

(b) *Applicable risk-based capital rules* means consolidated risk-based capital rules established by an appropriate Federal banking agency that are applicable to a financial company.

(c) *Appropriate Federal banking agency* has the same meaning as in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).

(d) *Control* has the same meaning as in § 225.2(e) of the Board's Regulation Y (12 CFR 225.2(e)).

(e) *Council* means the Financial Stability Oversight Council established by section 111 of the Dodd-Frank Act (12 U.S.C. 5321).

(f) *Covered acquisition* means a transaction in which a company directly or indirectly merges or consolidates with, acquires all or substantially all of the assets of, or otherwise acquires control of another company. A covered acquisition does not include an acquisition of ownership or control of a company:

(1) In the ordinary course of collecting a debt previously contracted in good faith if the acquired securities or assets are divested within the time period permitted by the appropriate Federal banking agency (including extensions) or, if the financial company does not have an appropriate Federal banking agency, five years;

(2) In a fiduciary capacity in good faith under applicable fiduciary law if the acquired securities or assets are held in the ordinary course of business and not acquired for the benefit of the company or its shareholders, employees, or subsidiaries;

(3) In connection with bona fide underwriting or market-making activities;

(4) Solely in connection with a corporate reorganization and the companies involved are lawfully controlled and operated by the financial company both before and following the reorganization; and

(5) That is, or will be, an issuer of asset back securities (as defined in Section 3(a) of the Securities and Exchange Act of 1934) so long as the financial company that retains an ownership interest in the company complies with the credit risk retention requirements in the regulations issued pursuant to section 15G of the Securities and Exchange Act of 1934.

(g) *Financial company* includes:

(1) An insured depository institution;

(2) A bank holding company;

(3) A savings and loan holding company;

(4) A company that controls an insured depository institution;

(5) A nonbank financial company supervised by the Board, and

(6) A foreign bank or company that is treated as a bank holding company for purposes of the Bank Holding Company Act.

(h) *Foreign financial company* means a financial company that is incorporated or organized in a country other than the United States.

(i) *Insured depository institution* has the same meaning as in section 3(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)(2)).

(j) *Nonbank financial company supervised by the Board* means any nonbank financial company that the Council has determined under section 113 of the Dodd-Frank Act (12 U.S.C. 5323) shall be supervised by the Board and for which such determination is still in effect.

(k) *State* means any state, commonwealth, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, or the United States Virgin Islands.

(l) *U.S. agency* has the same meaning as the term “agency” in § 211.21(b) of the Board’s Regulation K (12 CFR 211.21(b)).

(m) *Total regulatory capital* has the same meaning as the term “total capital” as defined under the applicable risk-based capital rules.

(n) *Total risk-based capital ratio* means the “total capital ratio” as calculated under the applicable risk-based capital rules.

(o) *Total risk-weighted assets* means the measure of consolidated risk-weighted assets that a financial company uses to calculate its risk-based capital ratios under the applicable risk-based capital rules.

(p) *U.S. branch* has the same meaning as the term “branch” in § 211.21(e) of the Board’s Regulation K (12 CFR 211.21(e)).

(q) *U.S. company* means a company that is incorporated in or organized under the laws of the United States or any State.

(r) *U.S. financial company* means a financial company that is a U.S. company.

(s) *U.S. subsidiary* means any subsidiary, as defined in § 225.2(o) of Regulation Y (12 CFR 225.2(o)), that is a U.S. company.

§ 251.3 Concentration limit.

(a) *In general.* (1) Except as otherwise provided in § 251.4, a company may not consummate a covered acquisition if upon consummation of the transaction, the liabilities of the resulting company would exceed 10 percent of the financial sector liabilities, and the company is or would become a financial company.

(2) *Financial sector liabilities.* (i) Subject to paragraph (a)(2)(ii) of this section, as of July 1 of a given year, financial sector liabilities are equal to the average of the year-end financial sector liabilities figure for the preceding two calendar years. The measure of financial sector liabilities will be in effect until June 30 of the following calendar year.

(ii) For the period beginning July 1, 2015, and ending June 30, 2016, financial sector liabilities are equal to the year-end financial sector liabilities figure as of December 31, 2014.

(iii) The year-end financial sector liabilities figure equals the sum of the total consolidated liabilities of all top-tier U.S. financial companies (as calculated under paragraph (b) of this section) and the U.S. liabilities of all top-tier foreign financial companies (as calculated under paragraph (c) of this section) as of December 31 of that year.

(iv) On an annual basis and no later than July 1 of any calendar year, the Board will calculate and publish the financial sector liabilities for the preceding calendar year and the average of the financial sector liabilities for the preceding two calendar years.

(b) *Calculating total consolidated liabilities.* For purposes of paragraph (a) of this section:

(1) *Covered acquisition by a U.S. company.* For a covered acquisition in which a U.S. company would acquire a U.S. company or a foreign company, liabilities of the resulting U.S. financial company equal the consolidated liabilities of the resulting U.S. financial company, calculated on a pro forma basis in accordance with paragraph (c) of this section.

(2) *Covered acquisition by a foreign company of another foreign company.* For a covered acquisition in which a foreign company would acquire another foreign company, liabilities of the resulting foreign financial company equal the U.S. liabilities of the resulting financial company, calculated on a pro forma basis in accordance with paragraph (d) of this section.

(3) *Covered acquisition by a foreign company of a U.S. company.* For a covered acquisition in which a foreign company would acquire a U.S. company, liabilities of the resulting foreign financial company equal the sum of: (i) the U.S. liabilities of the foreign company immediately preceding the transaction (calculated in accordance with paragraph (d) of this section) and (ii) the consolidated liabilities of the U.S. company immediately preceding the transaction (calculated in accordance with paragraph (c) of this section), reduced by the amount corresponding to any balances and transactions that would be eliminated in consolidation upon consummation of the transaction.

(c) *Liabilities of a U.S. company—*(1) *U.S. company subject to applicable risk-based capital rules.* For a U.S. company subject to applicable-risk based capital rules, consolidated liabilities are equal to:

(i) Total risk-weighted assets of the company; plus

(ii) The amount of assets that are deducted from the company's regulatory capital elements under the applicable risk-based capital rules, times a multiplier that is equal to the inverse of the company's total risk-based capital ratio minus one; minus

(iii) Total regulatory capital of the company.

(2) *U.S. company not subject to applicable risk-based capital rules.* For a U.S. company that is not subject to applicable risk-based capital rules, consolidated liabilities are equal to the total liabilities of such company on a consolidated basis, as determined under applicable accounting standards.

(d) *Liabilities of a foreign company—(1) Foreign banking organization.* For a foreign banking organization, U.S. liabilities are equal to:

(i) The total consolidated assets of each U.S. branch or U.S. agency of the foreign banking organization, calculated in accordance with applicable accounting standards; plus

(ii) The total consolidated liabilities of each top-tier U.S. subsidiary that is subject to applicable risk-based capital rules (or reports information to the Board regarding its capital under risk-based capital rules applicable to bank holding companies), calculated as:

(A) Total consolidated risk-weighted assets of the subsidiary; plus

(B) The amount of assets that are deducted from the subsidiary's regulatory capital elements under the applicable risk-based capital rules, times a multiplier that is equal to the inverse of the subsidiary's total risk-based capital ratio minus one; minus

(C) Total consolidated regulatory capital of the subsidiary; plus

(iii) The total consolidated assets of each top-tier U.S. subsidiary that is not subject to applicable risk-based capital rules and does not report information regarding its capital under

risk-based capital rules applicable to bank holding companies, calculated in accordance with applicable accounting standards.

(2) *Foreign financial company that is not a foreign banking organization.* For a foreign company that is not a foreign banking organization, U.S. liabilities are equal to:

(i) The total consolidated liabilities of each top-tier U.S. subsidiary that is subject to applicable risk-based capital rules (or reports information to the Board regarding its capital under risk-based capital rules applicable to bank holding companies), calculated as:

(A) Total consolidated risk-weighted assets of the subsidiary; plus

(B) The amount of assets that are deducted from the subsidiary's regulatory capital elements under the applicable risk-based capital rules, times a multiplier that is equal to the inverse of the company's total risk-based capital ratio minus one; minus

(C) Total regulatory capital of the subsidiary; plus

(ii) The total consolidated liabilities of each top-tier U.S. subsidiary that is not subject to applicable risk-based capital rules, calculated in accordance with applicable accounting standards.

(3) *Intercompany balances and transactions*—(i) *Foreign banking organization.* A foreign banking organization must reduce the amount of consolidated liabilities of its U.S. operations calculated pursuant to this paragraph (d) by amounts corresponding to intercompany balances and intercompany transactions between the foreign banking organization's U.S. domiciled affiliates, branches or agencies to the extent such items are not eliminated in consolidation, and increase consolidated liabilities by net intercompany balances and intercompany transactions between a non-U.S. domiciled affiliate and a U.S. domiciled affiliate,

branch, or agency of the foreign banking organization, to the extent such items are not reflected in the measure of liabilities.

(ii) *Foreign financial company.* A foreign company that is not a foreign banking organization may reduce the amount of consolidated liabilities of its U.S. operations calculated pursuant to this paragraph (d) by amounts corresponding to intercompany balances and intercompany transactions between the foreign organization's U.S. domiciled affiliates to the extent such items are not already eliminated in consolidation; provided that it increases consolidated liabilities by net intercompany balances and intercompany transactions between a non-U.S. domiciled affiliate and a U.S. domiciled affiliate, to the extent such items are not already reflected in the measure of liabilities.

(e) *Applicable accounting standard.* If a company does not calculate its total consolidated assets or liabilities under GAAP for any regulatory purpose (including compliance with applicable securities laws), the company may submit a request to the Board that the company use an accounting standard or method of estimation other than GAAP to calculate its liabilities for purposes of this part. The Board may, in its discretion and subject to Board review and adjustment, permit the company to provide estimated total consolidated liabilities on an annual basis using this accounting standard or method of estimation.

§ 251.4 Exceptions to the concentration limit.

(a) *General.* With the prior written consent of the Board, the concentration limit under § 251.3 shall not apply to:

(1) A covered acquisition of an insured depository institution that is in default or in danger of default (as determined by the appropriate Federal banking agency of the insured depository institution, in consultation with the Board);

(2) A covered acquisition with respect to which assistance is provided by the Federal Deposit Insurance Corporation under section 13(c) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)); or

(3) A covered acquisition that would result in an increase in the liabilities of the financial company that does not exceed \$2 billion, when aggregated with all other acquisitions by the financial company made pursuant to this paragraph (a)(3) during the twelve months preceding the projected date of the acquisition.

(b) *Prior written consent*—(1) *General*. Except as provided in paragraph (c) of this section, a financial company must request that the Board provide prior written consent before the financial company consummates a transaction described in paragraph (a) of this section.

(2) *Contents of request*. (i) A request for prior written consent under paragraph (a) of this section must contain:

(A) A description of the covered acquisition;

(B) The projected increase in the company's liabilities resulting from the acquisition;

(C) If the request is made pursuant to paragraph (a)(3) of this section, the projected aggregate increase in the company's liabilities from acquisitions during the twelve months preceding the projected date of the acquisition; and

(D) Any additional information requested by the Board.

(ii) A financial company may satisfy the requirements of this paragraph (b) if:

(A) The proposed transaction otherwise requires approval by, or prior notice to, the Board under the Change in Bank Control Act, Bank Holding Company Act, Home Owners' Loan Act, International Banking Act, or any other applicable statute, and any regulation thereunder; and

(B) The financial company includes the information required in paragraph (b)(2) of this section in the notice or request for prior approval described in paragraph (b)(2)(ii)(A) of this section.

(3) *Procedures for providing written consent.* (i) The Board will act on a request for prior written consent filed under this paragraph (b) within 90 calendar days after the receipt of a complete request, unless that time period is extended by the Board. To the extent that a proposed transaction otherwise requires approval from, or prior notice to, the Board under another provision of law, the Board will act on that request for prior written consent concurrently with its action on the request for approval or notice.

(ii) In acting on a request under this paragraph (b), the Board will consider whether the consummation of the covered acquisition could pose a threat to financial stability.

(c) *General consent.* The Board grants prior written consent for a covered acquisition that would result in an increase in the liabilities of the financial company that does not exceed \$100 million, when aggregated with all other covered acquisitions by the financial company made pursuant to this paragraph (c) during the twelve months preceding the date of the acquisition. A financial company that relies on prior written consent pursuant to this paragraph (c) must provide a notice to the Board within 10 days after consummating the covered acquisition that describes the covered acquisition, the increase in the company's liabilities resulting from the acquisition, and the aggregate increase in the company's liabilities from covered acquisitions during the twelve months preceding the date of the acquisition.

§ 251.5 No evasion.

A financial company may not organize or operate its business or structure any acquisition of or merger or consolidation with another company in such a manner that results in evasion of the concentration limit established by section 14 of the Bank Holding Company Act or this part.

§ 251.6 Reporting requirements.

By March 31 of each year:

(a) A U.S. financial company (other than a U.S. financial company that is required to file the Bank Consolidated Reports of Condition and Income (Call Report), the Consolidated Financial Statements for Holding Companies (FR Y-9C), the Parent Company Only Financial Statements for Small Holding Companies (FR Y-9SP), or the Parent Company Only Financial Statements for Large Holding Companies (FR Y-9LP), or is required to report consolidated total liabilities on the Quarterly Savings and Loan Holding Company Report (FR 2320)) must report to the Board its consolidated liabilities as of the previous calendar year-end in the manner and form prescribed by the Board; and

(b) A foreign financial company (other than a foreign financial company that is required to file a FR Y-7) must report to the Board its U.S. liabilities as of the previous calendar year-end in the manner and form prescribed by the Board.

By order of the Board of Governors of the Federal Reserve System, November 4, 2014.

Robert deV. Frierson,
Secretary of the Board.

Billing Code: 6210-01-P

[FR Doc. 2014-26747 Filed 11/13/2014 at 8:45 am; Publication Date: 11/14/2014]